UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

UNICCO SERVICE COMPANY Employer [1] and UNITED PRODUCTION WORKERS UNION, LOCAL 17-18 Petitioner and LOCAL 32E, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO Intervenor	Case No. 34-RC-1739

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons.

The Employer, a corporation with its principle office and place of business located in Boston, Massachusetts, provides maintenance and cleaning services at facilities in various states. The Petitioner seeks to represent a unit consisting of the Employer's full-time and regular part-time service and maintenance employees working at Lederle Labs in Pearl River, New York. The Employer and the Intervenor contend that the instant petition is barred by the existence of a collective-bargaining agreement which was renewed prior to the filing of the petition.

The record reveals that prior to April 1, 1999, the employees in the petitioned-for unit at the Lederle Labs, Pearl River, New York, location were employed by Colin Service Systems (herein called Colin). Those employees were covered by the "Association Master Agreement" between the Intervenor and the Cleaning and Maintenance Contractors Council of Suburban New York and Connecticut, which covers porters, cleaners, utility workers, window washers and "like situate" employees in the Bronx, Westchester, Putnam, Duchess, Rockland, Orange and Sullivan Counties in New York, and Fairfield County in Connecticut. The Colin employees were also covered by a "location rider" to the master agreement between the Intervenor and Colin. The master agreement expired on October 31, 1998, and the location rider expired on March 31, 1999.

Although not entirely clear, it appears that the Employer was bound to the above-described master agreement at several other locations. As a result, the Employer and the Intervenor engaged in collective-bargaining negotiations for a successor to the master agreement beginning in November 1998. In late January 1999, the Employer learned that it would be acquiring the account at Lederle Labs from Colin, and so informed the Intervenor. As a result, the negotiations that ensued in February 1999 for a successor master agreement

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[1] The Employer's name appears as amended at the hearing.

also included discussions between the Employer and the Intervenor on the terms of the location rider for the Lederle Labs location. Thereafter, on March 22, 1999, the Employer signed and dated its agreement on the terms of a new master agreement, and gave it to the Intervenor at the latter's office in the Bronx, New York. On April 1, 1999, the Employer began operations at the Lederle Labs location. On April 19, 1999, the Intervenor signed and provided the Employer with a copy of the master agreement which had previously been signed by the Employer. The effective dates of the master agreement are November 1, 1998, through October 31, 2001. The master agreement includes, *inter alia*, union security and management rights clauses, a grievance/arbitration procedure, and clauses covering a broad range of economic benefits and other terms and conditions of employment.[2]

The Employer and the Intervenor subsequently agreed upon the terms of the location rider, which was signed by the Employer and sent to the Intervenor with a cover letter dated June 7, 1999. By cover letter dated June 15, 1999, the Intervenor returned a signed copy of the rider to the Employer. The location rider states, *inter alia*, that it is between the Employer and the Intervenor, that it is in addition to the master agreement, and that it relates only to the Employer's employees at Lederle Labs in Pearl River, New York. Although the effective dates of the location rider are April 1, 1999, through March 31, 2002, the rider itself does not indicate the date that it was actually signed by either party. The rider covers such economic issues as wages, vacations, insurance, pension, holidays, severance pay, working hours, sick leave, bereavement pay, and prepaid legal benefits.

The petition in the instant case was filed on June 21, 1999, a copy of which was received by the Employer by facsimile transmission on the same date. Prior to that date, the Employer had no knowledge of any organizing campaign by the Petitioner among the employees at the Lederle Labs location.

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[2] Although the master agreement references five "side letters", there is no dispute that to date such letters have not been executed by the Employer and the Intervenor.

In support of its contention that there is no contract bar, the Petitioner proffered evidence revealing that at a negotiation session held on February 18, 1999, a Colin employee presented a list of proposals for the location rider, which he described as an "employee petition," to the Intervenor's representative, who in turn presented the list to the Employer. According to the employee, he never heard back from the Intervenor regarding the list of proposals and did not attend any more negotiating sessions. However, on June 7, 1999, the Intervenor provided copies of a proposed location rider during a meeting with the employees at the Lederle Labs location, and apparently sought their approval. The employees objected to the proposal because of the amount of the wage increase and because the Employer had not signed it. The signed location rider differs in several respects from that which was presented to the employees on June 7.

Based upon the foregoing and the record as a whole, I find that the Employer and the Intervenor entered into a collective-bargaining agreement containing substantial terms and conditions of employment prior to the filing of the instant petition. *Appalachian Shale Products Co*., 121 NLRB 1160 (1958). More particularly, I note that both the master agreement and the location rider, which in effect constitute a single collective-bargaining agreement, were signed by each party prior to the date that the petition was filed. The fact that all signatures do not appear on the same formal document and that the location rider is undated does not preclude a finding of a contract bar, particularly where, as here, the exchange of correspondence between the parties establishes that both the master agreement and the location rider were signed by each party. See, e.g., *Cooper Tank and Welding Corp*., 328 NLRB No. 97 (June 18, 1999); *Diversified Services, Inc. d/b/a Holiday Inn of Ft. Pierce*, 225 NLRB 1092 (1976); *Georgia Purchasing*, *Inc.,* 230 NLRB 1174 (1977); *United Telephone Co. of Ohio*, 179 NLRB 732 (1969). Moreover, the reference in the master agreement to certain side letters which have yet to be executed is also insufficient to preclude the finding of a contract bar. See, e.g., *Stur-Dee Health Products, Inc*., 248 NLRB 1100 (1980), and cases cited therein. Finally, I note the absence of any

evidence that employee ratification was a condition precedent to the effectiveness of the contract . *Aramark Sports & Entertainment Services, Inc.,* 327 NLRB No. 16, n. 4 (Oct. 30, 1998).

Accordingly, I find that the master agreement and the location rider bars an election herein. I shall, therefore, dismiss the instant petition.

ORDER

IT IS HEREBY ORDERED that the petition filed in this matter be, and it hereby is, dismissed.

Right to Request Review

Upon the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 28, 1999.

Dated at Hartford, Connecticut this 14th day of July, 1999.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Acting Regional Director
Region 34
National Labor Relations Board

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